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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1934.

No. 361

E. W. CLARK,
COMMISSIONER OF INSURANCE OF THE STATE OF IOWA, AS RECEIVER OF FEDERAL SURETY COMPANY,
Petitioner,

vs.

HARRY O. WILLIARD, W. W. WHEATON AND C. W. HAY,
AS TRUSTEES OF GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON-LAW TRUST, AND GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON-LAW TRUST,
Respondents.

AMICUS CURIAE BRIEF AND ARGUMENT OF ERNEST PALMER, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS.

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Respondents.

AMICUS CURIAE BRIEF AND ARGUMENT OF ERNEST PALMER, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS.

STATEMENT.

MAY IT PLEASE THE COURT:

The Director of Insurance of the State of Illinois submits this brief on behalf of the People of the State of Illinois and the Department of Insurance thereof.

In Illinois, liquidation of insurance companies is effected through a receiver, appointed by the Director of Insurance, after a court hearing on the existence of cause for the appointment, under the provisions of an Act entitled "An Act in relation to delinquent insurance companies, associations and societies," approved June 26, 1925, as amended and supplemented, to be found in Cahill's Illinois Revised Statutes, 1933, Chap. 73, Par. 105 (1) to (13), pages 1603-1606.

Section 4 of the Act provides that the receiver shall be vested by operation of law with title to all of the property, contracts and rights of action of the company.

Several insurance companies of Illinois are now in course of liquidation under the provisions of the above mentioned Act. One of them, the National Life Insurance Company of the United States of America, had over two hundred million dollars of life insurance in force and did business in more than twenty States; another, the Peoria Life Insurance Company, had more than one hundred million dollars of life insurance in force and did business in several States.

In the course of these liquidations, questions have arisen concerning the titles of the receivers, and the rights of creditors of the companies in foreign States, upon which the decision in this case will have a direct bearing.

The purpose of this brief is to state the principal questions involved in this case as they appear to the Director of Insurance of the State of Illinois and to comment thereon.

The statutory charter provisions, upon which the petitioner in this case relies, fix the rights of all corporate creditors one against the others and require that each

creditor shall receive equable distribution without preference acquired by any act after dissolution.

The principal question is: May another State disregard the statutory charter provisions and adjust the rights of creditors one against the others, in a manner contrary thereto?

The Montana court in the decision complained of purports to deal with the power of Montana to control titles to property located within its confines. That, it is submitted, is only an incident to the question for decision. The Montana court purports to recognize the title of the charter liquidator, but recognition of the title is not enough. It is necessary to look to the purpose for which the statutory charter provisions vested title in the liquidator. That purpose is to procure equable distribution. That purpose is to be accomplished through the medium of a statutory trust, created under the charter, of which the charter liquidator is trustee. The important question here is not who shall be the trustee, but whether one creditor may obtain a preference at the expense of another, notwithstanding the charter provisions. Providing for equable distribution was within the jurisdiction of the Iowa legislature, and the statute accomplishing that purpose, and the Iowa decrees which were entered against the Federal Surety Company in accordance with the Iowa statute, are denied full faith and credit, when another State takes action that results in creditors receiving other than equable distribution.

A summary of the argument contained in this brief follows:

I.

The full faith and credit clause requires that a statute of Iowa, and decrees of an Iowa court entered pursuant thereto, directing equable distribution of the assets of an Iowa corporation among its creditors, shall be given effect in Montana.

II.

Montana local policy cannot control the Iowa statute or decrees providing for equable distribution. Any such policy must yield to the full faith and credit clause when asserted as a defense against a creditor's attempt to obtain a preference contrary to the Iowa statute and decrees.

III.

Iowa alone possesses jurisdiction to determine the rules by which intangible property of one of its dissolved corporations shall be held, transferred and distributed among that corporation's creditors.

IV.

Comments upon certain contentions relied upon by respondents or the Montana Supreme Court.

(a) Respondents' contention that full faith and credit need not be given to the legislation or judgments of other states regarding title to real estate not located therein.

(b) The Montana court's decision that Montana has control over rights of property located therein and remedies in regard thereto.

(c) The contention that Chapter 233 of the Iowa statutes restricting the Court's choice in selection of a receiver was passed subsequently to the execution of the attachment bond and therefore should not be regarded.

(d) The contention that respondents did not deal voluntarily with the Federal Surety Company.

(e) The contention that because the property in the hands of the Surety Company was subject to execution levy, it is likewise so subject in the Receiver's hands.

ARGUMENT.

I.

The full faith and credit clause requires that a statute of Iowa, and decrees of an Iowa court entered pursuant thereto, directing equable distribution of the assets of an Iowa corporation among its creditors, shall be given effect in Montana.

The real question here involved is not one regarding the power of Montana to determine the law under which title to property located within its jurisdiction shall pass or liens thereon be created, but is whether the full faith and credit clause of the Constitution requires that a statute of Iowa and decrees of an Iowa court rendered pursuant thereto, directing equable distribution of the assets of a dissolved insolvent Iowa corporation among its creditors, shall be given effect in Montana, in order to prevent the creation of preferences after dissolution in favor of certain creditors, resulting in unequal distribution.

Under Section 8964 of the Iowa Code, 1927, and Chapter 233 of the Acts of the Forty-third General Assembly of that State (R. 42-43), the title to the property of the Federal Surety Company located in Montana passed to the petitioner, E. W. Clark, Commissioner of Insurance of the State of Iowa, as charter liquidator, upon dissolution of that Company. That is settled by *Clark* v. *Williard,* 292 U. S. 112, 122, where it is stated:

> "The case should go back to the end that the priority of the execution may be determined with understanding of the *title* displaced and overridden."

It was further stated (292 U. S. 129):

> "To resume: The Supreme Court of Montana will determine whether there is any local policy whereby an insolvent foreign corporation in the hands of a *liquidator with title* must submit to the sacrifice of its assets or to their unequal distribution by writs of execution."

Under Section 8964 of the Iowa Code, equality of distribution among creditors, in effect, is prescribed by the provision that the court "shall decree a dissolution of said company, and a distribution of its effects, and appoint a receiver therefor." (R. 43)

That equality of distribution among creditors is prescribed by the Iowa statute appears from the decrees entered by the Iowa court on September 25, 1931, and December 22, 1931 (R. 45-54). By the first mentioned decree the Company was dissolved and its effects ordered to be distributed. Clark, as Commissioner of Insurance, was appointed permanent Receiver. He was directed to wind up the business of the Company. Creditors were ordered to file proofs of claim within a limited time, in default of which they were barred from participation in distribution. The Receiver was directed to sell the property of the Company, subject to the approval of the court. The court retained jurisdiction for the purpose of entering further orders or decrees necessary or proper (R. 46-49). By the second decree the court found that the Company had been dissolved on September 25, 1931, its corporate existence was then terminated; that the Receiver was the successor to the Company, and as such held title to all property owned by it at the time it ceased to exist, and that in passing upon the validity of claims presented, judgments purporting to have been rendered after September 25, 1931, should

be disregarded, and any lien asserted by virtue of attachment or other proceedings in any case where judgment was not rendered prior to September 25, 1931, should be disregarded in determining the rights of claimants (R. 53-54). There is an inescapable conflict between the last mentioned provision of that decree and the Montana judgment under review.

It is submitted that upon the entry of the Iowa decree of September 25, 1931, dissolving the Company, appointing Clark as receiver thereof, with title to all its assets, he became a statutory trustee for the benefit of creditors (*Relfe* v. *Rundle,* 103 U. S. 222, 226), and their interests as beneficiaries of the trust could no more be changed by action taken by one or more of them thereafter, than if the trust had been created by agreement among the interested parties. In the absence of direction in the statute to the contrary, the trust upon which Clark held the title to the assets of the Company was one for distribution thereof, first, among its creditors, and second, among its stockholders, *in accordance with their respective rights as they then stood.* This was the construction which was given to the statute by the Iowa decree of December 22, 1931.

The decision of the Montana court purports to recognize the title of the charter liquidator, but it refuses to give effect to the statute and the decrees of the Iowa court construing it and putting it into operation, in so far as equality of distribution among creditors and prevention of creation of subsequent preferences are provided for.

Does such refusal constitute a denial of full faith and credit to the Iowa statute or to the Iowa decrees, which is prohibited by Section 1 of Article IV of the Constitution? The answer to this question depends upon the jurisdiction of the Iowa legislature to make the foregoing provisions in the charter of an Iowa corporation and to give

them binding effect and operation upon all who deal with the corporation.

The legislative power of the State which creates a corporation may provide for its dissolution and for the succession of a liquidator with title to its assets, to make distribution of the corporate assets among creditors. Such a provision is binding upon all creditors, no matter where residing, and is entitled to full faith and credit in another State. (*Relfe* v. *Rundle,* 103 U. S. 222, 226; *Clark* v. *Williard,* 292 U. S. 112.)

The rule stated in *Relfe* v. *Rundle,* 103 U. S. 222, 226, is particularly applicable. Every person who deals with a corporation "everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs, both in life and after dissolution," and all who are interested in its affairs can insist that such charter provisions shall be regarded.

On the same principle, the legislature of the incorporating State has jurisdiction effectively to provide for equality of distribution among the creditors of the corporation.

Wherever a corporation goes for business, it carries its charter with it, as that is the law of its existence, and the charter is the same abroad as it is at home. While a corporation of one State may be excluded from business in another, or restricted in the exercise of some of its powers, it must, if admitted, in the absence of legislation equivalent to making it a corporation of the latter State, be taken, both by the latter State and those who deal with it, as a creature of the State of its creation. (*Canada Southern R. R. Co.* v. *Gebhard,* 109 U. S. 527, 537; *Relfe* v. *Rundle,* 103 U. S. 222, 226; *Bockover* v. *Life Association,* 77 Va. 85, 90; *McClement* v. *Supreme Court, I. O. F.,* 222 N. Y 470; 119 N. E. 99, 101.)

Montana might have excluded Federal Surety Company from doing business in Montana for any cause, including dissatisfaction with the terms of its charter providing for the method of its dissolution and the distribution of its assets in case of insolvency. But if Montana admitted the corporation to do business in Montana, *it did so subject to the provisions of its Iowa charter* regarding equality of distribution among its creditors, and to all legislative control "that may be properly exercised over it at the place of its creation." (*Canada Southern R. R. Co.* v. *Gebhard,* 109 U. S. 527, 537; *Relfe* v. *Rundle,* 103 U. S. 222, 226.)

In *Canada Southern R. R. Co.* v. *Gebhard,* 109 U. S. 527, 537, the question involved was whether legislation of the Parliament of the Dominion of Canada passed after the execution by a railroad company of its bonds, by which it was provided that all bondholders should be deemed to have assented to a re-arrangement of the corporate indebtedness of the railroad company, under which the indebtedness and the interest rate were reduced, was binding upon bondholders resident in New York, who sued in a Federal Court in New York upon the bonds. In Canada, the legislation was valid and binding. This Court held that "things done in one country under the authority of law may be of binding effect in another country", and announced the principle that the corporate charter abroad is the same as at home, and decided that one who deals with a foreign corporation "impliedly subjects himself to such laws of the foreign government, affecting powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes." "He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view

to any other laws with which they are not in entire harmony." While no question regarding the full faith and credit clause was there involved, the opinion establishes the competency of the legislature of the incorporating country by apt charter provisions to prescribe the effect of obligations entered into by the corporation, and holds that all who deal with the corporation are bound by such legislation.

Bradford Electric Light Company v. *Clapper,* 286 U. S. 145, is a decision which we regard as particularly important. It was there decided that a statute is a public act within the meaning of Section 1 of Article IV of the Constitution. There an action was brought in a New Hampshire court under the Workmen's Compensation Act of that State. The defendant was a Vermont corporation. The employee, whose death was caused in consequence of an accident arising in the course of his employment, was a resident of Vermont and was employed by the corporation in Vermont, but for service in either State. Vermont had a compensation law differing in many respects from that of New Hampshire. Death of the employee occurred as a result of an accident in New Hampshire, while the employee was a resident of Vermont. The Company relied upon the Vermont compensation law as a defense. The question was whether the Vermont law became a part of the contract governing the relations, rights and liabilities of the employer and the employee, even though the injury occurred without the State, while the employee was temporarily employed without the State, and whether, if such were the case, full faith and credit had to be given by the New Hampshire courts to the Vermont compensation law, and that law be given effect as a defense by the Company in the New Hampshire courts.

It was contended, in opposing the application of the full faith and credit clause, that the Vermont statute would

thereby be given extra-territorial effect. The Court held that the rights created by the Vermont Act were entitled to protection when set up in New Hampshire by way of defense to the action there brought. (286 U. S. 159.)

It is submitted that that opinion is applicable here. Here, the petitioner relies upon the full faith and credit clause as a defense against the motion of the respondents to vacate the order of the District Court of Cascade County, Montana, which confirmed the title of petitioner and denied the validity of the execution levies of the respondents (R. 87). In asserting this defense, petitioner is acting on behalf of all creditors of the Surety Company. It is his duty to protect their interests. He seeks by that defense to have the provisions of the Iowa charter and the Iowa decrees given effect, against the attempt to create a preference by action taken subsequent to dissolution, contrary to the Iowa statute and the Iowa decrees.

In *Royal Arcanum* v. *Green,* 237 U. S. 531, there was involved the question as to whether the New York courts were bound, under the full faith and credit clause, to give effect to a Massachusetts statute under which a fraternal benefit society was incorporated with regard to its powers to increase rates, and to a judgment of a Massachusetts court upholding the validity of an increase in rates made under the authority of the statute. The Court referred to *Head* v. *Providence Ins. Co.,* 2 Cranch 127, holding that a corporation derives all its powers from the act of its incorporation and to the line of cases of which *Converse* v. *Hamilton,* 224 U. S. 243 (hereinafter referred to) was one, and decided that applying the full faith and credit clause to the case was but another application of the principles established by those cases. It was held that the Massachusetts statute was controlling, and by disregarding it the New York courts failed to give effect to the full faith and credit clause.

That case was followed in *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 551, where the Court said:

> "We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicil."

If a member of a fraternal benefit society, regardless of his residence, is bound by legislative provisions of the incorporating State, which constitute a part of the charter, and by judgments of its courts construing the statutes and giving them effect, notwithstanding that they conflict with the law of the forum and of the residence of the member, the same principle should be applied to one who becomes a creditor of a corporation.

The power to contract, under which the obligation is created, is conferred by the incorporating law. (*McClement* v. *Supreme Court I. O. F.*, 222 N. Y. 470, 119 N. E. 99, 101.) A creditor, taking advantage of the power to contract thus accorded, acquires whatever rights he possesses, subject to the conditions annexed by the incorporating law, just as a member of a fraternal benefit society accepts the benefits of membership subject to such conditions and liabilities as membership imposes under the incorporating law.

As in *Royal Arcanum* v. *Green*, 237 U. S. 531, 540, 541, it does not seem to be material in this case to attempt to make a distinction between the Iowa statute and the Iowa decrees relied upon by the petitioner. The statute relied upon, properly construed, and the Iowa decrees provide for the same thing, viz., equality of distribution among creditors. Application of the full faith and credit clause to either the statute or the decrees will produce the same result.

II.

Montana local policy cannot control the Iowa statute or decrees providing for equable distribution. Any such policy must yield to the full faith and credit clause when asserted as a defense against a creditor's attempt to obtain a preference contrary to the Iowa statute and decrees.

Of what importance is the determination by the Montana court that the policy of that State permits an execution levy to override the title of a charter liquidator of a foreign corporation?

In the absence of constitutional mandate, each State would have the right to determine for itself to what extent it would give effect, in litigation in its courts, to the statutes of a sister State or the judgments of the courts thereof.

Under the doctrine of comity, in the absence of a local policy to the contrary, recognition and enforcement of rights claimed or defenses urged under applicable statutes or court proceedings of other states ordinarily would be given.

The full faith and credit clause substitutes for the rule of comity *constitutional obligation* with respect to the acts and judicial proceedings of a sister State in matters over which it has jurisdiction. That clause at least requires the courts of the forum to recognize a defense founded upon an applicable statute or court proceeding of a sister State on a matter within its jurisdiction, notwithstanding such recognition is contrary to local policy.

In *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, 160, already referred to, it was contended that the full faith and credit clause did not require New Hampshire to give

effect to a statute of another State obnoxious to its public policy. The Court stated that while the full faith and credit clause does not require enforcement of every right conferred by a statute of another state, and a plaintiff may be denied relief "because the enforcement of the right conferred would be obnoxious to the public policy of the forum," where the party claiming the benefit of the full faith and credit clause is asserting a defense "different considerations apply." It was there said (286 U. S. 160):

> "A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another State, as under the circumstances here presented, subjects the defendant to irremediable liability. This may not be done."

Here, to refuse to give effect to the Iowa statute and the decrees rendered pursuant thereto, which were relied upon by the petitioner as a defense to respondents' motion to vacate the order of the District Court of Cascade County and to give preference to their execution levy, will subject all other creditors of the Surety Company to the irremediable loss of the assets levied upon under the execution and render certain the payment of a lesser dividend to them than they would otherwise receive.

As the Iowa legislature had jurisdiction to provide for equality of distribution among the creditors of a corporation which it created, in the event of its dissolution, that matter is a question with respect to which "no other State properly can be said to have any public policy." (*Converse* v. *Hamilton*, 224 U. S. 243, 260.)

Converse v. *Hamilton* would seem to be decisive. There a receiver appointed under the provisions of a Minnesota

statute (who was a quasi-assignee of a cause of action in favor of creditors of an insolvent corporation against its stockholders) sought in a Wisconsin court to recover from a Wisconsin stockholder the liability imposed by the Minnesota statute upon the stockholders of a Minnesota corporation. The defense was made that the enforcement of such a liability was contrary to the public policy of Wisconsin. The full faith and credit clause of the Constitution was relied upon to reverse the judgment of the Wisconsin court upholding the defense. It appeared that proceedings had been had in Minnesota under the Minnesota statute to establish the liability, but the stockholder sued had not been served with process therein. The decision of this Court required that the public policy of Wisconsin on the subject of enforcing such stockholders' liability yield to the full faith and credit clause.

Here a similar contention is made, viz., that the policy of Montana permits an execution levy upon the assets of a dissolved insolvent Iowa corporation to take precedence over the title of a charter liquidator, notwithstanding the statutes and judicial proceedings in Iowa requiring equable distribution. As the public policy of Wisconsin was required to yield to the full faith and credit clause in *Converse* v. *Hamilton*, it would seem that Montana's public policy on the question here involved must yield to that clause.

No State policy on any question has ever been permitted to transcend the Federal Constitution. By its terms, it is the supreme law of the land in so far as the subject comes within its scope. If the full faith and credit clause of the Constitution applies to the Iowa statute or the Iowa decrees, the mandate of the Constitution cannot be overcome by a contrary declaration of local policy. That was precisely what the Constitution was designed to prevent.

It was held in *Christmas* v. *Russell,* 5 Wall. 290, 302, and repeated in *Roche* v. *McDonald,* 275 U. S. 449, 452, that a judgment of a sister State, if valid where rendered, must be enforced in another State, although repugnant to its own statutes or policy. These cases, and the authorities cited in them, establish the proposition that where the full faith and credit clause and the local policy of the State of the forum come in conflict, the latter must yield to the former, subject possibly to the exception noted in the cases cited in the *Clapper* case, 286 U. S. 145, 159, 160, regarding the circumstances under which a State may decline to enforce a foreign cause of action, leaving it otherwise unaffected.

The Montana court regards the question here involved as one of comity. We submit it to be a question of constitutional obligation. Whether the question is one of comity or constitutional obligation depends upon the jurisdiction of the Iowa legislature to deal with the question of equable distribution. If it had such jurisdiction, its statutes and judicial proceedings thereunder are entitled to full faith and credit, which cannot be avoided by a contrary local policy.

III.

Iowa alone possesses jurisdiction to determine the rules by which intangible property of one of its dissolved corporations shall be held, transferred and distributed among that corporation's creditors.

It is not very clear from the record just what is the nature of the property involved in this controversy. The original complaint averred that the Surety Company had "cash money" in the amount of $25,000.00 in the hands of the Industrial Accident Insurance Commission of Montana, and that the Company had a $15,000.00 judgment recovered

in Montana against another corporation, $10,000.00 in custodia legis in Montana and $3,500.00 in cash in the hands of its trustees in Montana. (R. 29.) The answer admitted these allegations, except it averred that only $19,200.00 was in the hands of the Industrial Accident Insurance Commission, and only $8,500.00 in the custody of the law. (R. 40.) The affidavit filed in support of the respondents' motion to vacate states that the execution of respondents was levied "upon certain property and bonds" of the Company in the hands of the Commissioner of Agriculture of Montana, amounting to $19,000.00, and upon $8,500.00 "of funds" in the hands of the clerk of one of the Montana courts, belonging to the Company, its officers or agents, in trust therefor. (R. 70.) The execution is in the record (R. 86) but not the levy thereof.

To the extent that any of the property levied upon consisted of bonds, stocks, bank deposits, credits or accounts, it was clearly intangible property under the decisions of this Court. Cash, however, has been held to be a tangible. (*Blodgett* v. *Silberman,* 277 U. S. 1, 18.)

Late cases decided by this Court, of which *Farmers Loan & Trust Company* v. *Minnesota,* 280 U. S. 204, 209; *Baldwin* v. *Missouri,* 281 U. S. 586, 593, and *First National Bank* v. *Maine,* 284 U. S. 312, 326, are the leading cases, lay down the proposition that two States do not have jurisdiction to levy inheritance taxes upon the same intangible property; —that only the State of domicil of the owner has such jurisdiction. The inheritance taxes there in question were succession taxes, the validity of which, under the Constitution, is based upon the power of the State to control the right of succession to property passing from the dead to the living and to prescribe the terms upon which it passes.

If, in the case of an individual, a transfer from the dead to the living can be accomplished only at one place, and in

the case of intangibles, only at the domicil of the deceased owner, does not the same rule apply where a corporation is dissolved and the statutes of the State of its domicil, forming a part of its charter, provide that the title to its property shall be transferred to a liquidator for equable distribution among its creditors?

If Montana would have no right to levy a succession tax upon the property here involved or prescribe the terms of its succession, had it been individually owned and its owner had died, can it be said to have the power to determine property rights therein contrary to the Iowa statute by which it was held by its dissolved owner, because the controversy with regard thereto happens to get into the Montana courts? If the property levied upon here had situs in Iowa for the purposes of taxation and succession, must not the rules regulating its transfer, disposition and distribution among the corporation's creditors be those prescribed by the Iowa law? Must not a valid transfer in Iowa be given effect in Montana, and must not that transfer have the same effect in Montana that it has in Iowa?

If the property involved is intangible property, over which Iowa had jurisdiction because it was held and owned by an Iowa corporation, a failure to give effect to the Iowa statute regulating the passage of title thereto upon dissolution and prescribing the nature of the beneficial interests of its creditors therein, and to the Iowa decrees based upon the Iowa statute, is a denial of full faith and credit to the Iowa statute and decrees.

There is nothing in the record showing the circumstances under which the property levied upon came into Montana, which might be made the basis of a conclusion that the property had obtained a business situs in Montana because of its being an integral part of a local business there trans-

acted by the Surety Company. (See *First National Bank* v. *Maine*, 284 U. S. 312, 320, and *Farmers Loan & Trust Company* v. *Minnesota*, 280 U. S. 204, 208.)

IV.

Comments upon certain contentions relied upon by respondents or the Montana Supreme Court.

(a) Respondents' contention that full faith and credit need not be given to the legislation or judgments of other states regarding title to real estate not located therein.

The question involved does not concern title to real estate located in another State. It is not controverted, and, indeed, it cannot be, that a State by appropriate legislation, may endow a corporation of its creation with such powers and impose upon it such duties as it may prescribe, and may provide as a part of the incorporating act the rights which its creditors will have in its assets in case of its insolvency. Such provisions are part of the law of its creation. They go with it into every State where it may transact business. Such provisions are within the jurisdiction of the incorporating State. They are binding upon its creditors, regardless of their residences. They may be insisted upon, as was said in the *Relfe* case, (103 U. S. 226) by anyone who is "interested in the affairs of the corporation." They create a defense against an attempt of any creditor to obtain, whether under the laws of another State or otherwise, a preference which the incorporating statute denies.

Such legislation, and court decrees entered in a proceeding against the corporation instituted in conformity therewith, giving it effect, differ materially from legislation or court decisions of one State attempting to exercise

jurisdiction over real estate located in another State. Although title to real estate is not here involved, if it were, the question of title would only be an incident of the broader question of the jurisdiction of the Iowa legislature by appropriate provision to direct equable distribution among the creditors of one of its corporations upon dissolution.

We submit that the legislation here in question was within the jurisdiction of the Iowa legislature, and it and the decrees entered pursuant thereto, are entitled to the protection of the full faith and credit clause. The Act of Congress passed under that clause of the Constitution (Sec. 687, Title 28, U. S. C. A.), requires the decrees to be given the same effect in Montana as they have in Iowa. Their effect in Iowa is shown by the Iowa decree of December 22, 1931 (R. 50). The Montana judgment under review is in direct conflict therewith.

(b) The Montana court's decision that Montana has control over rights of property located therein and remedies in regard thereto.

The opinion of the Montana court states: "Rights and remedies of property are governed by the laws of the state in which it is situate" (R. 11). Its view apparently was that Montana's control over property within its boundaries is sovereign and unimpaired by the Federal Constitution. But Montana cannot withhold full faith and credit under the guise of property regulation. Full faith and credit requires in this case equable distribution. If Montana brings about other than equable distribution, it has failed to give full faith and credit, and its ground or reason for so doing is immaterial.

A statute of Mississippi, under the guise of attempting to give effect to its statutes of limitation, sought to control the enforcement in its courts of judgments obtained in other States. The statute was declared unconstitutional because it conflicted with the full faith and credit clause. (*Christmas* v. *Russell*, 5 Wall. 290, 301.) Here Montana under the guise of its right to regulate property and remedies in Montana attempts to control the enforcement of the Iowa statutes and Iowa decrees in regard to matters over which Iowa, and Iowa alone, had jurisdiction.

On respondents' theory it might be urged with equal force that Montana could refuse to give full faith and credit to a personal judgment of a court of a sister State in a cause in which it had jurisdiction, because the effect of so doing eventually would be a judgment against the defendant, under which his Montana property might be taken in execution, and thus the control of Montana over the property located within its boundaries be interfered with.

(c) The contention that Chapter 233 of the Iowa statutes restricting the Court's choice in selection of a receiver was passed subsequently to the execution of the attachment bond and therefore should not be regarded.

A question is raised that Chapter 233 of the Acts of the Forty-third General Assembly was passed by the Iowa legislature after the execution of the attachment bond to the respondents. Chapter 233 is copied in the Record at page 43. That is not the statute which provides for equality of distribution among creditors; that was done by Section 8964 of the Iowa Code of 1927, being Section 1731 of the Code of 1897 (R. 51). Chapter 233 merely restricts the court in the selection of a person to be appointed receiver or liquidating officer, and in the compensation which should

be paid to him. But even if Section 8964 (which is the governing statute on the question of equality of distribution among creditors) had been passed subsequently to the execution of the bond in question, it would have been a valid exercise of power on the part of the Iowa legislature. It impaired no contract obligation. This question was fully considered in the *Bockover* case, 77 Va. 85, 88, where the statute was passed after the insurance contract was made. The Court said (p. 89):

> "A statute, whose whole object is to provide a convenient and judicious mode for winding up an insolvent corporation and distributing its assets equitably amongst those entitled thereto, surely violates no contract" * * *

The statute there in question was the same one which was considered in the case of *Relfe* v. *Rundle,* 103 U. S. 222, 226. See also *Swan* v. *Mutual Reserve Fund,* 155 N. Y. 9, 21, 22.

(d) The contention that respondents did not deal voluntarily with the Federal Surety Company.

It is also contended by respondents that they did not voluntarily deal with the Federal Surety Company, and, therefore, cannot be deemed to have assented to any of its charter provisions. Whether they dealt voluntarily or not is unimportant. What security should be required to be given by the plaintiff in an attachment suit instituted in Montana was a matter for the Montana legislature to decide. Montana might have decided that corporations whose charter provisions were similar to those of the Federal Surety Company should not be accepted as sureties upon attachment bonds. But when Montana authorized Federal Surety Company to do business in that State and to become surety on such bonds, it must

be deemed to have done so with full knowledge of the provisions of its charter. As Montana might have permitted the attachment without security, respondents can have no complaint. Montana, in a sense, was the one to whom the bond was given, although it was made for respondents' benefit. The requirement of the bond and its terms were prescribed by Montana. It was Montana which permitted the attachment and prescribed the conditions. Respondents cannot take advantage of the bond and deny Montana's right to act for them in exacting it. When Montana permitted Federal Surety Company to become surety on an attachment bond, it conferred upon that corporation no power which its charter did not give it. That respondents did not consent to the attachment against their property and to the bond given as security cannot operate to make that bond a different obligation of the Surety Company than if they had consented. Montana had no right to impose upon the Company a liability contrary to its charter granted by Iowa, though it had the right to exclude it from doing business generally, or to prohibit it from writing attachment bonds.

(e) The contention that because the property in the hands of the Surety Company was subject to execution levy, it is likewise so subject in the Receiver's hands.

Respondents claim that Clark, as receiver, can have no more power than the Surety Company had, and as the Company's property was subject to execution in its hands, the receiver's title to the property is likewise subject to execution issued against the Company. This argument can have no weight if the construction of the Iowa charter which we have contended for is a correct one, and if it is entitled to full faith and credit in Montana. Equable distribution is a right of all creditors. Clark, as receiver, represents them. He is their trustee. If that is a correct construction of the Iowa charter and it is entitled to faith

and credit, it necessarily follows that a decision giving one creditor a preference over other creditors denies that charter faith and credit.

CONCLUSION.

In conclusion, it is submitted that the Iowa legislature was dealing with a subject wholly within its jurisdiction in determining the method of distribution of the assets of one of its corporations among its creditors upon its dissolution. That was a question which was within its jurisdiction and not within the jurisdiction of any other State. Its legislation, and the decrees of its courts construing it and giving it effect, are entitled to full faith and credit. There is no conflict of sovereign powers, because no sovereignty other than Iowa had jurisdiction with regard to the real issue here involved. So far as the property levied upon was intangible property, Iowa, and Iowa alone, could control the transfer of its title and its distribution among creditors.

The attempt of Montana to permit other than equable distribution among creditors is a denial of full faith and credit to the Iowa statute and decrees. Its reasons are immaterial. Its local policy cannot control the Constitution,—to it they must yield.

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